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MOORMAN et al. v. CITY OF LYNCHBURG.

Jan. 18, 1912. Rehearing Denied March 14, 1912.

[73 S. E. 987.]

1. Jury (§ 14*)—Right to Trial by Jury—Equitable Issues.—Where a defendant, in a suit by a city to compel the removal of obstructions placed by him in a street, establishes a bona fide claim of title to the land in the street, he is entitled to a jury trial to determine the ownership of the land; but where he shows no such bona fide claim he cannot demand a jury, nor deprive equity of jurisdiction to compel the removal of the obstruction.

[Ed. Note.—For other cases, see Jury, Cent. Dig. §§ 35-83; Dec. Dig. § 14.* 9 Va.-W. Va. Enc. Dig. 11.]

2. Jury (§ 14*)—Right to Jury Trial.—An owner platted land into lots and blocks, and sold lots described by calls for street lines. For many years the street was marked by a well-defined, traveled way, and was used by the public at will. The owner in his lifetime, and his heirs after his death, did not question the right of the city to the street. The street was never obstructed until the city began the construction of sewers. Held, that a grantee of the owner of property described by the street lines had no such bona fide claim of title to the streets as entitled him to a trial by jury of a suit by the city to compel him to remove obstructions placed in the street, or to deprive equity of its jurisdiction to compel removal of the obstructions.

[Ed. Note.—For other cases, see Jury, Cent. Dig. §§ 35-83; Dec. Dig. § 14.* 9 Va.-W. Va. Enc. Dig. 11.]

Appeal from Corporation Court of Lynchburg.

Suit by the City of Lynchburg against *Winnington L. Moorman* and another for a mandatory injunction. From a decree for plaintiff, defendants appeal. Affirmed.

Coleman, Easley & Coleman, for appellants.

Wilson & Manson, for appellee.

ATLANTIC COAST LINE R. CO. v. GRUBBS.

March 14, 1912.

[74 S. E. 144.]

1. Railroads (§ 348*)—Crossing Accident—Contributory Negligence.—In an action for injuries to a traveler in a collision at a railroad crossing, evidence held to sustain a finding that plaintiff was not negligent.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1138-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

1150; Dec. Dig. § 348.* 4 Va.-W. Va. Enc. Dig. 141, 143. 14 Va.-W. Va. Enc. Dig. 300.]

2. Railroads (§ 348*)—Crossing Accident—Contributory Negligence—Burden of Proof.—Contributory negligence in an action for injuries at a railroad crossing is an affirmative defense, the burden of maintaining which is on the defendant.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1117-1123; Dec. Dig. § 346.* 4 Va.-W. Va. Enc. Dig. 143. 14 Va.-W. Va. Enc. Dig. 300.]

3. Trial (§ 156*)—Contributory Negligence—Questions of Law or Fact.—When a consideration of the evidence in a negligence case is taken from the jury by a demurrer to the evidence, if the jury could have found therefrom that plaintiff was free from negligence contributing proximately to the causes of his injury, the court is bound to so find.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 143. 14 Va.-W. Va. Enc. Dig. 300.]

4. Railroads (§§ 314, 328*)—Crossing Accident—Care Required.—Where a railroad crossing and the view approaching it are obstructed, a higher degree of care is required of both the traveler and railroad company; the degree of caution required being in proportion to the danger, obstructions, noises, etc.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 965, 1057-1070; Dec. Dig. §§ 314, 328.* 4 Va.-W. Va. Enc. Dig. 137.]

5. Interest (§ 21*)—Damages—Verdict.—Under the express provisions of Code 1904, § 3390, the damages awarded in an action for injuries bear interest from the date of the verdict.

[Ed. Note.—For other cases, see Interest, Cent. Dig. § 42; Dec. Dig. § 21.* 7 Va.-W. Va. Enc. Dig. 831.]

Error to Hustings Court, Part 2, of Richmond.

Action by H. L. Grubbs against the Atlantic Coast Line Railroad Company. Judgment for plaintiff, and defendant brings error. Modified and affirmed.

Wm. B. McIlwaine and *E. P. Cox*, for plaintiff in error.

Geo. C. Gregory and *Samuel A. Anderson*, for defendant in error.

WASHINGTON-SOUTHERN RY. CO. *v.* GROVE'S ADM'R.

March 14, 1912.

[74 S. E. 148.]

1. Master and Servant (§ 243*)—Injuries—Contributory Negligence—Violation of Orders.—Intestate, a yard brakeman, was ordered by

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.